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In the Supreme Court of the United States

OCTOBER TERM, 1980

TEAMSTERS LOCAL UNION NO. 115, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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Petitioner's supplemental memorandum calls the Court's attention to the Board's supplemental decision and order in *United Dairy Farmers Cooperative Association*, 257 N.L.R.B. No. 129 (Aug. 14, 1981). In that case, a three-member panel of the Board, pursuant to the Third Circuit's remand in *United Dairy Farmers Cooperative Association* v. *NLRB*, 633 F. 2d 1054 (1980), held that a bargaining order was appropriate to remedy "outrageous" and "pervasive" employer unfair labor practices that had precluded the Union from securing authorization cards from a majority of the employees.

That decision by the Board affords no additional basis for granting the petition in this case. First, as explained in our brief in opposition, filed June 25, 1981 (at pages 5-6), the court below, unlike the Third Circuit in *United Dairy*,

found it unnecessary to decide whether the Board has the authority to issue a nonmajority bargaining order. As the District of Columbia Circuit read the Board's opinions in this case, a majority of the Board indicated that, even if it possessed such authority, the issuance of a bargaining order in the present case would be inappropriate.

Second, the three-member panel that issued the nonmajority bargaining order in *United Dairy* consisted of then Chairman Fanning and Member Jenkins, the two dissenters in the present case, and Member Zimmerman, who recognized "the Third Circuit's decision as binding upon the Board for the purpose of deciding this case" and therefore found it "unnecessary to determine whether the Board has such authority" (257 N.L.R.B. No. 129 at 4 n.8). In these circumstances, and because two new members subsequently have been added to the Board (Chairman Van de Water and Member Hunter), the holding in *United Dairy* should be viewed as limited to the circumstances of that particular case, rather than as a definitive statement of the Board's position on its authority to issue nonmajority bargaining orders.

For these reasons and those stated in our brief in opposition, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1981

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